

Honorable John H. Chun

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

KURT A. BENSHOOF, A.R.W. by and through  
his father, KURT A. BENSHOOF, BRETT  
FOUNTAIN, URVE MAGGITT,

Plaintiffs,

v.

ANDREA CHIN, ANTHONY BELGARD,  
DONOVAN BROUSSARD, NATHAN CLIBER,  
CATHERINE CORNWALL, GREGG CURTIS,  
JANE DOE, JENNY DURKAN, JOHN DUUS,  
NICHOLAS EVANS, PASCAL HERZER, RYAN  
ELLIS, MICHAEL FOX, TYLER GOSLIN,  
JULIE KLINE, ERNEST JENSEN, JONATHAN  
KIEHN, SPENCER KURZ, MAGALIE  
LERMAN, RICHARD LIMA, ADAM  
LOSLEBEN, YVES LUC, SARAH  
MACDONALD, JACOB MASTERSON, GRANT  
MAYER, STEVEN MITCHELL, JOHNATHAN  
MUSSEAU, BREHON NESS, LILIYA  
NESTERUK, STEPHEN OKRUHLICA,  
KATRINA OUTLAND, JESSICA OWEN,  
SARAH PENDLETON, DWAYNE PIRAK,  
BRIAN REES, BLAIR RUSS, JULIE SALLE,  
DANIEL SCHILLING, TY SELFRIDGE,  
NATHAN SHOPAY, STEVEN STONE,  
MICHAEL TRACY, MELANIE TRATNIK,  
SARAH TURNER, TREVOR TYLER,  
MICHAEL VIRGILIO, ANDREW WEST, CHAD  
ZENTNER, in their individual capacities, CITY  
OF SEATTLE, KING COUNTY,

Defendants.

No. 2:24-cv-00808-JHC

DEFENDANTS CORNWALL,  
HERZER, SALLE, AND KING  
COUNTY'S OPPOSITION TO  
BRETT FOUNTAIN'S MOTION FOR  
JUDICIAL NOTICE OF FACTS

NOTED ON MOTION CALENDAR:  
March 31, 2025

DEFENDANTS KING COUNTY, CORNWALL, HERZER,  
AND SALLE'S OPPOISITION TO BRETT FOUNTAIN'S  
MOTION FOR JUDICIAL NOTICE OF FACTS - 1  
2:24-cv-00808-JHC

**Leesa Manion (she/her)**  
Prosecuting Attorney  
CIVIL DIVISION  
701 5<sup>th</sup> Avenue, Suite 600  
Seattle, WA 98104  
(206) 477-1120 Fax (206) 296-0191

I. **INTRODUCTION AND RELIEF REQUESTED**

Defendants King County, Catherine Cornwall, Pascal Herzer, and Julie Salle (“Defendants”) file this opposition to Brett Fountain’s Motion for Judicial Notice of Facts (Dkt #87). Brett Fountain’s requested facts are improper for judicial notice under Federal Rules of Evidence 201(b). Defendants respectfully request that this Court deny Brett Fountain’s motion for judicial notice of facts.

II. **FACTUAL BACKGROUND**

Plaintiff Kurt Benshoof filed his original complaint on behalf of himself and his son, A.R.W., against six defendants. Dkt. #1. In his First Amended Complaint (“FAC”), Mr. Benshoof added two new plaintiffs, Brett Fountain and Urve Maggitti, who were alleged to be his assistants of counsel, and increased the total number of defendants to 50. Dkt. #69. According to the FAC, Brett Fountain is a resident of Texas who attempted to help Mr. Benshoof file court documents beginning in July of 2024. Dkt. #69 at p.9, 123. The propriety of Mr. Fountain and Ms. Maggitti as additional plaintiffs in this lawsuit is in dispute, and is a legal issue raised in defendants Cliber and Russ’s Motion to Dismiss, filed on March 17, 2025. Dkt. #90 at p.8.

On March 10, 2025, Mr. Fountain filed the motion for judicial notice of facts in which he asked this Court to take judicial notice of the following facts per Federal Rules of Evidence 201(b), and to instruct the jury to accept the noticed facts as conclusive per Federal Rules of Evidence 201(f):

1. Fact: I am one of the plaintiffs in this case.
2. Fact: Magalie Lerman is one of the defendants in this case.
3. Fact: Jessica Owen is one of the defendants in this case.
4. As a co-plaintiff, I am not only authorized to serve defendants with the summons and complaint, but also I share in the responsibility to perform such service. Fed. R. Civ. Proc. 4(c)(1).  
 “The plaintiff is responsible for having the summons and complaint served  
 ... and must furnish the necessary copies to the person who makes service.”

5. Defendants Magalie Lerman and Jessica Owen have both been so served. See attached proofs of service on Lerman (Exhibit A) and Owen (Exhibit B).

Dkt. #87.

### III. ARGUMENT

Under Rule 201 of the Federal Rules of Evidence, a court may take judicial notice of facts that are “not subject to reasonable dispute” because they either are (1) generally known within the trial court’s territorial jurisdiction, or (2) can be accurately and readily determine from sources whose accuracy cannot reasonably be questioned. Fed. R. Evid. 201(b). “[A] high degree of indisputability is the essential prerequisite’ to taking judicial notice of adjudicative facts and ... ‘the tradition [of taking judicial notice] has been one of caution in requiring that the matter be beyond reasonable controversy.’ ‘Because the effect of judicial notice is to deprive a party of an opportunity to use rebuttal evidence, cross-examination, and argument to attack contrary evidence, caution must be used in determining that a fact is beyond controversy under Rule 201(b).’” *Rivera v. Philip Morris, Inc.*, 395 F.3d 1142, 1151 (9<sup>th</sup> Cir. 2005).

Examples of facts that courts may take judicial notice include scientific principles, authoritative treatises, the court’s own record, official government documents, maps, published compilations, and geographic and historical facts...etc. *See* 2 Handbook of Fed. Evid. § 201:3 (9th ed.).

The facts proffered in Mr. Fountain’s motion are not matters appropriate for judicial notice. The facts in question are not matters generally known throughout the Western District of Washington, nor are they facts that can be determined from a source whose accuracy cannot reasonably be questioned. *See e.g. Holland v. King County Adult Detention*, 2013 WL 1192763 (W.D. Wash. March 22, 2013) (declining to take judicial notice of letters presented by the plaintiff because the letters are

1 declarations not proper subjects for judicial notice). On the contrary, defendants Cliber and Russ have  
2 filed a pending motion to dismiss in which they raised the question of whether Brett Fountain is a  
3 proper plaintiff and whether Lerman and Owen are proper defendants in this lawsuit.

4 **IV. CONCLUSION**

5 The facts proffered in Brett Fountain's motion for judicial notice of facts are not appropriate  
6 for judicial notice and the Court should therefore deny Mr. Fountain's motion.

7  
8 I certify that this memorandum contains 701 words, in compliance with the Local Civil Rules.

9 DATED this 25<sup>th</sup> day of March 2025.

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11 LEESA MANION (she/her)  
Prosecuting Attorney

12 By: s/ Peggy Wu  
Peggy Wu, WSBA #35941

13 Senior Deputy Prosecuting Attorney  
14 King County Prosecuting Attorney's Office, Civil  
Division  
15 701 5<sup>th</sup> Ave, Suite 600  
Seattle, WA 98104  
16 Phone: (206) 477-1120  
[pwu@kingcounty.gov](mailto:pwu@kingcounty.gov)  
17 *Attorney for King County, Catherine Cornwall,*  
*Pascal Herzer, and Julie Salle*  
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**CERTIFICATE OF FILING AND SERVICE**

I hereby certify under penalty of perjury under the laws of the State of Washington that on March 25, 2025, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF electronic filing system and sent the same to the following:

Pro Se Plaintiff

Kurt Benshoof  
22701 42<sup>nd</sup> Place W.  
Mountlake Terrace, WA 98043  
Ph: 206-460-4202  
Email: [kurtbenshoof@gmail.com](mailto:kurtbenshoof@gmail.com)  
[Kurtbenshoof1@gmail.com](mailto:Kurtbenshoof1@gmail.com)

Attorneys for Defendant City of Seattle

Catherine Riedo, WSBA #50418  
Email: [Catherine.Riedo@seattle.gov](mailto:Catherine.Riedo@seattle.gov)  
Carson Canonie, WSBA #62464  
Email: [Carson.Canonie@seattle.gov](mailto:Carson.Canonie@seattle.gov)  
City of Seattle Attorney's Office  
701 5<sup>th</sup> Avenue, Suite 2050  
Seattle, WA 98104  
Ph: (206) 684-8200

Pro Se Plaintiff

Brett Fountain  
2100 W NW HWY  
114 #1115  
Grapevine, TX 76051-78708  
**Via US Mail**

Pro Se Plaintiff

Urve Maggitti  
244 Blackburn DR  
Berwyn, PA 19312  
917-340-0561  
Email: [urve.maggitti@gmail.com](mailto:urve.maggitti@gmail.com)

Attorneys for Fox, Goslin, Mitchell

Darren A. Feider, WSBA #22430  
Email: [dfeider@sbj.law](mailto:dfeider@sbj.law)  
Monica Ghosh, WSBA #56589  
Email: [mghosh@sbj.law](mailto:mghosh@sbj.law)  
SEBRIS BUSTO JAMES  
15375 SE 30<sup>th</sup> Place, Suite 310  
Bellevue, WA 98007  
(425) 454-4233

Howard Brown  
1003 West Michigan Street  
Hammond, LA 70401  
[Pro Se Interested Party]  
**Via US Mail**

Attorneys for Blair Russ and Nathan Cliber

Sarah Turner, WSBA #37748  
Email: [sturner@grsm.com](mailto:sturner@grsm.com)  
Michael Tracy, WSBA #51226  
Email: [mtracy@grsm.com](mailto:mtracy@grsm.com)  
Gordon Rees Scully Mansukhani LLP  
701 5<sup>th</sup> Avenue, Suite 2100  
Seattle, WA 98104  
(206) 695-5100

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CIVIL DIVISION  
701 5<sup>th</sup> Avenue, Suite 600  
Seattle, WA 98104  
(206) 477-1120 Fax (206) 296-0191

1 DATED this 25<sup>th</sup> day of March 2025.

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3 s/ Katie Wilson  
Katie Wilson, Paralegal  
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Prosecuting Attorney  
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Seattle, WA 98104  
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